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Nos. 89-1973 and 90-69

In the Supreme Court of the United States

OCTOBER TERM, 1990

JOSLYN MANUFACTURING COMPANY, PETITIONER

v.

T.L. JAMES & COMPANY, INC.

POWERLINE SUPPLY COMPANY, INC. ET AL., PETITIONERS

v.

T.L. JAMES & COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a parent corporation is liable under the Comprehensive Environmental Response, Compensation, and Liability Act for response costs resulting from the release of hazardous substances at a subsidiary corporation's facility where the parent maintained a separate corporate identity and had no actual involvement in the operation of the subsidiary's facility.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

Petitioners Joslyn Manufacturing Company, Inc. and Powerline Supply Company, Inc. are, respectively, a past owner and a present partial owner of the "Lincoln" site, located in Bossier Parish, Louisiana, that was formerly used to treat wood and to process creosoting chemicals. Respondent T.L. James & Company, Inc. (James Company) is a past owner of a dissolved corporate subsidiary, Lincoln

Creosoting Co., that conducted wood treating and creosoting operations at that site. In 1986 and 1987, the Louisiana Department of Environmental Quality ordered petitioners, respondent, and other parties to clean up hazardous substance contamination at the site. Joslyn filed this action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, and state law against Powerline, the James Company, and others to require those parties to share in the clean-up costs. The United States District Court for the Eastern District of Louisiana entered summary judgment for the James Company, holding that it was not liable under CERCLA for the cost of clean-up. 89-1973 Pet. App. 9a-31a. The court of appeals affirmed. *Id.* at 1a-8a.

1. CERCLA enhances the Environmental Protection Agency's (EPA's) authority to deal effectively with the release of hazardous substances into the environment. See generally *Pennsylvania* v. *Union Gas Co.*, 491 U.S. 1 (1989). Under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1), EPA may take direct "response" actions to abate any actual or threatened release of any hazardous substance. 42 U.S.C. 9604(a)(1). Congress has established the Hazardous Substance Superfund to pay for federal response actions. See 26 U.S.C. 9507. CERCLA provides that the federal government may bring cost recovery actions pursuant to Section 107(a)(4)(A), 42 U.S.C. 9607(a)(4)(A), to replenish the fund when EPA has expended money in performing response actions. Sections 107(a)(4)(B) and 113(f) of CERCLA also authorize non-governmental parties to recover their necessary costs of response in certain circumstances. See 42 U.S.C. 9607(a)(4)(B); 42 U.S.C. 9613(f).

A party seeking recovery of response costs under CERCLA must establish four elements: (1) the defendant falls within one or more of the classes of liable persons described in Section 107(a); (2) the site is a "facility" as

defined in Section 101(9); (3) a "release" or "threatened release" of a "hazardous substance" has occurred or is occurring; and (4) the release or threatened release has caused the party to incur "response costs." 42 U.S.C. 9607(a). See, *e.g.*, *United States* v. *South Carolina Recycling & Disposal, Inc.*, 653 F. Supp. 984, 991-992 (D.S.C. 1984), aff'd *sub nom. United States* v. *Monsanto Co.*, 858 F.2d 160 (4th Cir. 1988), cert. denied, 491 U.S. 600 (1989).[1]

As to the first of these four elements, CERCLA establishes four broad classes of liable persons: (1) the owners and operators of hazardous substance facilities and sites; (2) persons who owned or operated a facility at the time hazardous substances were disposed of at that facility; (3) persons who arranged for disposal or treatment of the hazardous substances; and (4) persons who transported the hazardous substances and selected the disposal facility. § 107(a)(1)-(4), 42 U.S.C. 9607(a)(1)-(4). CERCLA defines the term "owner or operator" to include "any person owning or operating such facility," § 101(20)(A), 42 U.S.C. 9601(20)(A), and it defines the term "person" to include "an individual, firm, corporation, association, partnership, consortium, [or] joint venture," § 101(21), 42 U.S.C. 9601(21).

2. Petitioner Powerline does not dispute that it currently owns a portion of the Lincoln site and is therefore liable, under Section 107(a)(1), for clean-up expenditures at the site. Similarly, petitioner Joslyn does not dispute that it

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[1] It is well settled that responsible parties are strictly liable under CERCLA. *E.g.*, *Monsanto*, 858 F.2d at 167; *Tanglewood East Homeowners* v. *Charles-Thomas, Inc.*, 849 F.2d 1568, 1572 (5th Cir. 1988); *New York* v. *Shore Realty Corp.*, 759 F.2d 1032, 1042 (2d Cir. 1985). In addition, they are jointly and severally liable when the environmental harm is indivisible. *E.g.*, *O'Neil* v. *Picillo*, 883 F.2d 176, 178 (1st Cir. 1989), cert. denied, 110 S. Ct. 1115 (1990); *Monsanto*, 858 F.2d at 172; *United States* v. *Chem-Dyne Corp.*, 572 F. Supp. 802, 810-811 (S.D. Ohio 1983).

owned and operated the wood treating and creosote processing facility at the Lincoln site from 1950 through 1969 and is therefore liable, under Section 107(a)(2), for clean-up expenditures at the site. However, petitioners assert that respondent James Company is also liable under Section 107(a)(2) because its now dissolved subsidiary, Lincoln Creosoting Co., owned and operated the wood treating and creosote processing facility from the facility's inception in 1935 until its sale to Joslyn in 1950.

Joslyn filed its action against the James Company on September 18, 1987. After extensive discovery as to the relationship of the various parties to the Lincoln site, the parties moved for summary judgment. The district court granted summary judgment for the James Company. The court assumed, as a matter of general, pre-CERCLA, corporate law, that the James Company could not be held liable for Lincoln Creosoting Co.'s activities at the site without "first piercing the corporate veil." 89-1973 Pet. App. 10a-15a. Surveying several cases recognizing the limited liability of shareholders (*id.* at 12a-14a), the court stated:

> Based upon the foregoing authorities, this court holds that the corporate form, including limited liability for shareholders, is a doctrine firmly entrenched in American jurisprudence that may not be disregarded absent a specific congressional directive. Neither the clear language of CERCLA nor its legislative history provides authority for imposing individual liability on corporate officers or direct liability on parent corporations.

Id. at 14a.

The district court "decline[d] to adopt the analysis" set forth in other cases, including *New York* v. *Shore Realty Corp.*, 759 F.2d 1032 (2d Cir. 1985), imposing CERCLA liability on corporate officers and shareholders who par-

ticipate in the operation of facilities that release hazardous substances. 89-1973 Pet. App. 11a & n.4, 30a n.20. The court explained that those cases "involved factual situations where the personal participation in the illegal disposal of hazardous waste by the corporate officers was significant." *Id.* at 30a n.20. The court stated that if the James Company and its officers and directors "had been actively involved in the day-to-day operations of Lincoln, including the disposal of hazardous waste, then, arguably liability would attach." *Ibid.*

The district court next examined whether the James Company's relationship with Lincoln Creosoting Co. provided a basis for "piercing the corporate veil" and holding the parent corporation liable for the actions of its subsidiary. The court first observed that it was "undisputed" that federal law would govern that question in this case. 89-1973 Pet. App. 15a. The court concluded, however, that the federal and state tests, which turn on the degree of the parent's involvement in the subsidiary's operations, are used "interchangeably" and are "essentially the same." *Id.* at 16a. The court identified a list of factors relevant to that "heavily fact-specific" inquiry (*id.* at 17a-18a) and then examined the relationship between the parent and its subsidiary in this case (*id.* at 19a-27a). The court found that while the James Company provided capital for Lincoln's initial incorporation, the James Company had virtually no involvement in Lincoln's actual operations:

> The lengthy factual account set forth [in the district court's opinion] establishes beyond doubt that Lincoln strictly adhered to basic corporate formalities by keeping its own books and records and frequently and periodically holding shareholder and director meetings. The daily operations of Lincoln and James Company were kept separate. The driving forces behind Lincoln

> were Messrs. Hayes and Tooke, neither of whom was employed by James Company. Lincoln owned its own property where the physical plant was situated. This property was not utilized for the business of James Company. None of Lincoln's employees were on the payroll of James Company. Though James Company provided capital for Lincoln's initial incorporation, it was the effort and initiative of Messrs. Tooke and Hayes that resulted in the formation of Lincoln.

Id. at 27a. The court concluded that despite "substantial discovery" Joslyn produced no triable issue of fact as to the separate identities of the James Company and Lincoln, and thus there was no legal basis for piercing the corporate veil. *Id.* at 29a-30a.

3. The court of appeals affirmed. 89-1973 Pet. App. 1a-8a. The court stated that the issues presented were whether CERCLA imposes "direct liability on parent corporations for violations of their wholly-owned subsidiaries" and whether "absent such liability, the corporate veil should be pierced to impose liability in the instant case." *Id.* at 2a. As to the first issue, the court of appeals observed that CERCLA does not expressly "hold parents directly liable for their subsidiaries' activities" and that imposing liability on that theory "would dramatically alter traditional concepts of corporation law." *Id.* at 5a. The court concluded that in the absence of "an express Congressional directive to the contrary, common-law principles of corporation law, such as limited liability, govern [the] court's analysis." *Id.* at 6a. As to the second issue, the court of appeals agreed with the district court that the undisputed facts here "militate against piercing the corporate veil" and that the disputed facts, even if resolved in petitioners' favor, would not alter the result. *Id.* at 6a-7a. The court of appeals accordingly

held that the district court properly entered summary judgment. *Id.* at 8a.[2]

DISCUSSION

Petitioners contend that the court of appeals' decision creates a conflict among the federal courts of appeals as to the scope of CERCLA liability. We disagree. In our view, the decision does not create a genuine conflict. Moreover, although its analysis is incomplete, the court's ultimate resolution, based on the record before it, is not necessarily incorrect. The decision is unlikely to affect government and other private cost recovery actions and, indeed, contributes little in defining the contours of CERCLA liability. Accordingly, the petitions for a writ of certiorari should be denied.

1. CERCLA imposes liability on persons—including corporations—"who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of." § 107(a)(2), 42 U.S.C. 9607(a)(2). The court of appeals plainly perceived the question in this case as whether CERCLA imposes liability on a parent corporation merely because the parent corporation owns a subsidiary that is itself liable under the statute. The court repeatedly framed the question presented in terms of whether CERCLA imposes "direct liability on parent corporations for violations of their wholly-owned subsidiaries." 89-1973 Pet. App. 2a.[3] And it provided its

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[2] The United States participated as amicus curiae in the court of appeals, identifying its theories of parent corporation liability and suggesting that the case be remanded for further factual development relevant to those theories. See C.A. Amicus Br. for the United States; C.A. Amicus Reply Br. for the United States.

[3] See also 89-1973 Pet. App. 5a ("Joslyn urges this court to read CERCLA's definition of 'owner or operator' liberally and broadly to reach parent corporations whose subsidiaries are found liable under the statute."); *ibid.* ("Joslyn asks this court to rewrite the language of

answer in those terms as well: "CERCLA does not define 'owners' or 'operators' as including the parent company of offending wholly-owned subsidiaries." *Id.* at 5a.[4] Instead, the court ruled, a parent corporation may be held liable for its subsidiary's acts only if the separate incorporation "is used as a *sham* to perpetrate a fraud or avoid personal liability." *Id.* at 8a. In those circumstances, a court could "pierc[e] the corporate veil" and hold the parent corporation "indirectly liable for [the subsidiary's] activities." *Ibid.*

The court of appeals thus rejected the theory that CERCLA imposes liability on a parent corporation by virtue of the parent's mere ownership of a liable subsidiary. Whatever the merits of that broad theory, no court of appeals has accepted it. Rather, the courts have indicated, as in this case, that a parent corporation may be held liable based on its ownership of a liable subsidiary only by "piercing the corporate veil."[5]

Petitioners are thus mistaken in suggesting that the court of appeals' ruling conflicts with decisions of other courts of appeals. As we explain below, petitioners rely on cases that address a question distinct from that presented here: whether parent corporations and stockholders who *them-*

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the Act significantly and hold parents directly liable for their subsidiaries' activities.").

[4] See also 89-1973 Pet. App. 7a ("Congress is quite capable of creating statutes that hold shareholders or controlling entities liable for the acts of valid corporations."); *ibid.* ("Similarly, La. Rev. Stat. Ann. Section 30:2276 (West 1989 Supp.) does not impose direct liability on parent corporations for the acts of their subsidiaries.").

[5] See, *e.g.*, *United States* v. *Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d 726, 744 (8th Cir. 1986), cert. denied, 484 U.S. 848 (1987); *New York* v. *Shore Realty Corp.*, 759 F.2d 1032, 1052 (2d Cir. 1985); see also *United States* v. *Kayser-Roth Corp.*, 724 F. Supp. 15, 23 (D.R.I. 1989), aff'd on other grounds, 910 F.2d 24 (1st Cir. 1990), petition for cert. pending, No. 90-816 (filed Nov. 23, 1990).

selves participate in the operation of the subsidiary's facility are directly liable under Section 107(a) of CERCLA as operators of the facility. Indeed, we expect that the question whether a parent corporation may become liable under CERCLA by virtue of mere ownership of a liable subsidiary is unlikely to generate a conflict among the courts of appeals. It is not the policy of the United States, which is the usual plaintiff in CERCLA cost recovery actions, to seek cost recovery from a parent corporation based solely on the parent's ownership of a liable subsidiary. There is, accordingly, no warrant for further review of the court of appeals' decision.

2. Although the United States does not seek cost recovery from parent corporations based on their mere ownership of liable subsidiaries, the government may seek cost recovery from a parent corporation based on a number of other established theories of corporate liability. For example, it "is a well-established rule that a corporation will be held liable for the torts and wrongful acts of its directors, officers, and employees within the scope of their authority." W. Knepper & D. Bailey, *Liability of Corporate Officers and Directors* § 2.11 (4th ed. 1988).[6] Accordingly,

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[6] See, *e.g.*, *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 344, 395 (1922) ("A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation."); see also, *e.g.*, 10 *Fletcher Cyclopedia on the Law of Private Corporations* § 4877, at 323 (rev. 1986) ("corporations can commit almost any kind of a tort that individuals can commit, and are liable for the acts of their agents and servants in the same degree as natural persons are liable for the acts of their servants and agents * * *; that is now hornbook law, unless changed by statute"); R. Stevens, *Handbook on the Law of Private Corporations* 359 (2d ed. 1949) ("In applying the doctrine of respondeat superior to any master, corporate or noncorporate, the fundamental question is whether the servant acted within the actual or apparent scope of his employment.").

in an amicus curiae brief filed in this case, the United States suggested that the court of appeals consider whether the James Company is liable based on any activities of *its officers or employees* in operating the Lincoln facility. See C.A. Amicus Br. for the United States 14-25.

The court of appeals did not discuss or directly acknowledge the government's theory. Rather, it limited its discussion to the theory advanced by Joslyn: namely, that a parent corporation is liable under CERCLA based on its power to control its subsidiary—a power that will always exist where the parent owns a majority of the subsidiary's stock.[7] As we have explained (pp. 7-8, *supra*), the court of appeals rejected that theory. Although it would have been proper for the court of appeals to consider the government's alternative theory, we cannot say that the court of appeals erred in failing to do so, or that the matter raises any issue warranting this Court's review. A court is not obligated, of course, to consider issues raised by amici.[8] And the government expressly acknowledged in its amicus brief that Joslyn had not squarely presented the government's theory to the court of appeals.[9] Furthermore, the government

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[7] Joslyn argued that CERCLA "imposes liability on parent corporations if they knew or should have known about the pollution and had the authority to control or abate it, but did not." Joslyn C.A. Br. 19. See also Powerline C.A. Br. 34-36. Joslyn makes a similar argument in this Court. See 89-1973 Pet. 9. Powerline's position on the merits in this Court is unclear. See 90-69 Pet. 6-11.

[8] See, *e.g.*, *United Parcel Service, Inc.* v. *Mitchell*, 451 U.S. 56, 60 n.2 (1981); *Bell* v. *Wolfish*, 441 U.S. 520, 530 n.13 (1979); *Knetch* v. *United States*, 364 U.S. 361, 370 (1960).

[9] The government stated below that "[t]he specific positions asserted by the United States in [its] brief are not presented by and, in at least one respect, are in direct conflict with the positions pressed by the appellants in their briefs." C.A Amicus Br. for the United States, Statement Regarding Oral Argument. While statements in Joslyn's court of appeals brief might be interpreted to coincide with the government's

conceded that the factual record before the court of appeals might not support imposition of liability under that theory in this case.[10]

At all events, we do not interpret the court of appeals' decision as rejecting the government's theory, which has been adopted by three other courts of appeals and rejected by none. See *United States* v. *Kayser-Roth Corp.*, 910 F.2d 24, 26-27 (1st Cir. 1990), petition for cert. pending, No. 90-816 (filed Nov. 23, 1990); *United States* v. *Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d 726, 744 (8th Cir. 1986), cert. denied, 484 U.S. 848 (1987); *New York* v. *Shore Realty Corp.*, 759 F.2d 1032, 1052 (2d Cir. 1985). The court of appeals "declined" Joslyn's suggestion that the court "follow the several courts, including the Second Circuit, which have extended CERCLA liability to parents." 89-1973 Pet. App. 5a. The court's decision, however, cannot reasonably be read as rejecting the standard of liability set forth by the Second Circuit in *Shore Realty Corp.*; rather, the court of appeals apparently agreed with the district court that the Second Circuit's *Shore Realty Corp.* standard was simply not apposite on the record in this case.

In *Shore Realty Corp.*, the Second Circuit held the corporate officer and shareholder who "made, directed, and controlled" all corporate decisions and actions, who was "in charge of the operation of the facility in question," and who "specifically directs, sanctions, and actively participates

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theory, the court of appeals did not interpret Joslyn's argument in that manner, and its failure to do so does not present any question warranting review.

[10] The government explained that its interest was limited to an articulation of "the proper *legal* standard" and that "the facts related to James Company's participation in the management of Lincoln should be fully developed and assessed by the district court after the proper legal standard is articulated by this Court." C.A. Amicus Reply Br. for the United States 7-8.

in Shore's maintenance of the nuisance" to be directly liable as an "operator" under CERCLA. 759 F.2d at 1038, 1052. In this case, the district court concluded that while the James Company participated in the initial capitalization of the Lincoln Creosoting Co., there was no showing that the James Company or its officers participated in the operation of the Lincoln facility. See 89-1973 Pet. App. 27a. The district court accordingly declined to adopt the Second Circuit's analysis. *Id.* at 30a n.20. The district court explained, however, that the *Shore Realty Corp.* analysis would likely control if the James Company had actively participated in the operation of the Lincoln facility:

> If T.L. James & Company and its officers and directors had been actively involved in the day-to-day operations of Lincoln, including the disposal of hazardous waste, then, arguably, liability would attach.

Ibid. We believe that the court of appeals likewise declined to follow *Shore Realty Corp.* because the Second Circuit's liability standard was simply not applicable to the facts before the court in this case.[11]

In sum, the court of appeals' decision in this case holds that the James Company may not be held directly liable under CERCLA by virtue of its mere ownership of a liable subsidiary. The decision does not address the distinct (and in this case purely hypothetical) question whether a parent corporation may be held directly liable based on its own activities at the facility. As the First Circuit recently explained, the court of appeals' decision in this case does not

[11] A district court in the Fifth Circuit has since similarly observed that "[i]f, as in the cases cited by Judge Stagg, [a shareholder] personally participated in the disposal of hazardous wastes, then he may be liable for the wrongful acts of the corporation even under Judge Stagg's *Joslyn* opinion." See *Riverside Market Devel. Corp.* v. *International Bldg. Products*, No. 88-5317 mem. op. (E.D. La. May 23, 1990) (1990 WL 72249, *3-*4).

conflict with the uniform view of the First, Second, and Eighth Circuits that corporate parents or their officers may become directly liable as operators under CERCLA if they actively participate in operating a subsidiary's facility. *Kayser-Roth Corp.*, 910 F.2d at 26-27. There is, accordingly, no occasion for this Court to address that issue (or other non-applicable theories of direct corporate liability) in this case. Cf. *Conway* v. *California Adult Auth.*, 396 U.S. 107, 110 (1969) (review of a "hypothetical issue" would constitute "an advisory opinion" and "an unjustifiable intrusion on the time of the Court").

3. The court of appeals recognized that a parent corporation may be held liable for its subsidiary's activities if there are grounds for disregarding the parent's and the subsidiary's separate corporate identities. See pp. 6-7, *supra*. The court agreed with the district court; however, that "the facts here militate against piercing the corporate veil." 89-1973 Pet. App. 7a. Powerline does not challenge this aspect of the court of appeals' decision. Joslyn contends, however, that the court of appeals erred by employing an unduly restrictive standard to make that determination. *Id.* at ii, 9, 12.

There is no real disagreement as to the broad principles that determine whether corporate forms should be disregarded. This Court has recognized on numerous occasions that an incorporated entity "is not to be regarded as legally separate from its owners in all circumstances." *First Nat'l City Bank* v. *Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 629 (1983). "In particular, the Court has consistently refused to give effect to the corporate form where it is interposed to defeat legislative policies." *Id.* at 630. See, *e.g.*, *Anderson* v. *Abbott*, 321 U.S. 349, 362-363 (1944). Where, as here, the legislative policies are expressed in a federal statute, the question whether separate corporations

should be treated as one is determined as a matter of federal law. *Id.* at 365.

As we have explained (pp. 7-8), the court of appeals rejected the notion that a parent corporation "owns" or "operates" a facility, for purposes of CERCLA, by virtue of its mere ownership of a subsidiary that holds title to the facility. The question, then, is what additional factors would justify treating a parent – that is not directly liable based on its actual participation in the operation of the facility – indirectly liable for its subsidiary's actions. Under traditional corporate law principles (which inform interpretation of the federal statute), the separate corporate identities of a parent and its subsidiary may be disregarded in a number of circumstances, including where "stock ownership has been resorted to, not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose * * * of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies." *Chicago M. & St. P. Ry.* v. *Minneapolis Civic & Comm. Ass'n*, 247 U.S. 490, 501 (1918). See, *e.g.*, *United States* v. *Jon-T Chemicals, Inc.*, 768 F.2d 686, 691 (5th Cir. 1985), cert. denied, 475 U.S. 1014 (1986); 1 *Fletcher Cyclopedia on the Law of Private Corporations* § 43, at 729-731 (rev. 1990). Applying that standard, the court of appeals affirmed the district court's determination that, in this case, the corporate veil should not be pierced.

We agree that CERCLA liability may be imposed on a parent corporation if a subsidiary that functions as the parent's "alter ego," "agent," or "instrumentality" is found liable. See *Jon-T Chemicals, Inc.*, 768 F.2d at 691. Those metaphorical terms, however, derive their meaning largely through "a careful review of the entire corporate relationship between various corporate entities, their directors and officers" (1 *Fletcher Cyclopedia on the Law of Private*

Corporations, *supra*, at 731). Corporate forms might be disregarded under CERCLA in other circumstances as well, depending on the manner in which those forms are employed in the CERCLA context. Cf. *Capital Telephone Co.* v. *FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974). This case, however, does not present an appropriate occasion to address that topic.

First, there currently is no conflict among the courts of appeals on the extent to which corporate forms may be disregarded under CERCLA. Indeed, the Fifth Circuit is the first court of appeals to rule on the issue.[12] Second, in many cases where it would be appropriate to disregard separate corporate identities, the parent corporation may be held directly liable, without piercing the corporate veil, based on its *own* actual participation in the operation of the facility in question. See *Kayser-Roth Corp.*, 910 F.2d at 26-28 & n.11; *United States* v. *Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d at 744; *Shore Realty Corp.*, 759 F.2d at 1052. See 1 *Fletcher Cyclopedia on the Law of Private Corporations*, *supra*, § 41.27. Thus, the issue may have limited practical importance. Finally, "the question of corporate identity is normally one of fact; each case is determined according to its own circumstances." *Id.* at § 43, at 730. In this case, the district court found that Joslyn fell far short of establishing the factors normally associated with "piercing the corporate veil," 89-1973 Pet. App. 25a-27a, and the court of appeals affirmed, without extended discussion, the district court's "heavily fact specific" determination (*id.* at 18a). In view of (1) the absence of a

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[12] The case that Joslyn cites as presenting a conflict, *Town of Brookline* v. *Gorsuch*, 667 F.2d 215 (1st Cir. 1981), involved the question whether a university-owned corporation qualified as a non-profit health or educational institution for the purpose of a regulatory exemption under the Clean Air Act, 42 U.S.C. 7601 *et seq.*

conflict among the courts of appeals, (2) the possibility that the issue may have limited importance in many cases, and (3) the fact-specific nature of the inquiry, this Court's review is not warranted at this time.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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